

General Terms and Conditions of Business



Desima Robin Gördes e.K.

General terms and conditions of business

In these terms and conditions, the term “Entrepreneur” shall be defined according to section 14 of the German Civil Code (“BGB”) (being a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in the course of his or her trade, business or profession) and it shall also include legal entities incorporated under public law special governmental trusts (section 310 (1) sentence (-1-) of the German Civil Code).

Dated year December 2018.

§ 1. Scope of Application and Data Protection

1.1. Our general terms and conditions of business (the „GTCBs“) shall apply exclusively to all deliveries and services as well as to all obligations similar to legal transactions (e.g. pre-contractual negotiations) within the meaning of section 311 (2) and (3) BGB, to the exclusion of any other terms that the customer seeks to impose or incorporate (unless we agree otherwise in writing). Upon request, we would be happy to send you these GTCBs free of charge. For Entrepreneurs these GTCBs shall also apply to all future arrangements between the parties for all deliveries and services we provide to the customer.

1.2. Entrepreneurs accept our GTCBs as binding by accepting our deliveries and services. Otherwise, all agreements including supplementary agreements shall be in writing and signed by an authorized signatory of Desima Robin Gördes e.K. to be effective if and insofar as they deviate from our GTCBs.

1.3. All customer data collected in connection with registration or order are stored by Desima Robin Gördes e.K. and processed for the purpose of administering your order and providing customer support; the aforementioned constitutes the notification prescribed by section 33 of the German Federal Data Protection Act.

§ 2. Offers, Formation of the Contract

2.1. The collection books (Desima books or Desima products in customer books), whether in hardcopy or in electronic form, and any other advertising mailings are subject to change. They shall not constitute an offer, nor do we accept any supply risk. We reserve the right to remove or replace products from our product range during the catalogue’s period of validity, and to alter prices and other conditions, as well as to change product features.

2.2. Any data contained in collection books (Desima books or Desima products in customer books), whether in hardcopy or in electronic form, and any other advertising mailings illustrations, drawings, weight or dimension data and any other technical data as well as any references to E, DIN, norms or data do not constitute any guarantees (warranties) but merely give approximate ideas of the products described in them and can be corrected at any time until the date of formation of the contract. Any technical information provided by us shall be regarded as approximate descriptions of the products and shall not be deemed to constitute a guarantee or warranty, or form part of the offer or have any contractual force, unless it is expressly designated as such (see also § 7 (7.4) GTCB).

2.3. We reserve the statutory copyright in our collection books, whether arising in hardcopy or in electronic form, and in other sale documents. All types of usage of the aforementioned documents, in particular any drawings, de-signs and logos contained therein, require our prior written permission.

2.4. Our quotations are subject to change and shall not constitute an offer. Any order placed by a customer constitutes an offer. We can accept this offer within 14 days of receipt of the order by order confirmation in text form or by sending the customer the ordered products within this time period.

2.5. Online selling is not our main market. Any online offer shall respect our “recommended retail prices” from our price list. We reserve the right to immediately increase the prices or even stop the cooperation if an entrepreneurs offers our products online at discounted rates.

§ 3. Prices, Terms of Payment

3.1. Unless a different agreement on the price has been concluded in writing, the quoted prices in our price list are net prices in EURO excluding VAT, customs fees and delivery terms “ex works”. Unless otherwise stated by us, the prices and conditions quoted by us in the collection books, in any quotations or in the price list, apply during the period until the end of the year. However, as the information in the collection book is subject to change, unless otherwise agreed between the parties in writing, the prices and terms that are quoted in the collection books and price lists that are current on the date of the order shall be the price of the products. Collection books can be purchased and price lists can be requested from us free of charge.

3.2. Deliveries within Germany and foreign deliveries the customer shall bear all shipping costs, regardless of the order value. For purchases of less than 50 running meter per article we charge an extra 15% exclusive of VAT on the net order value for the additional expenditure incurred in delivering the product. Unless we notify the customer to the contrary, the customer is responsible for disposal of all packaging.

3.3. The Incoterms 2010 – EX WORKS rule shall apply to deliveries.

3.4. All invoices are due according to the payment conditions written on the invoice. These are generally advance payment and in exceptional cases up to 30 days from the invoice date. Payment is not considered as effected until our account has been credited. We do not take bills of exchange as payment.

3.5. If an Entrepreneur fails to make payment due to us by the due date for payment, from the 31st day after the invoice date, we can demand and the Entrepreneur shall pay interest on the overdue amount at the rate of 10% per annum above the base lending rate of the German Federal Bank. In addition, if the payment is delayed we can charge, and the customer shall pay, € 15,0 net for each reminder or payment demand we send unless the customer proves that lower costs were incurred in making demands for payments. The statutory default interest applies in each case to all customers. This does not exclude our right to make a damages claim for any further substantiated loss.

3.6. Cash discounts will not be granted.

3.7. The customer is only entitled to set-off rights if his counterclaims are finally determined by a court of competent jurisdiction, undisputed or recognized by us. Any right of set-off can only be asserted if the counterclaim stems from the same contractual relationship.

3.8. In the event of the customer defaulting with payments, we reserve the right to only carry out the order processing against cash-on-delivery or cash-in-advance.

3.9. For incorrect orders (where the customer is at fault) the goods may be sent back after mutual agreement. They have to be delivered free of charge and are credited with maximum 70% of the goods' value.

§ 4. Time of Delivery, Acceptance of the Products

4.1. For larger orders we may deliver in instalments to the extent that it is reasonable for the customer.

4.2. Delivery dates or delivery periods are approximate only and are not binding on us unless otherwise agreed between the parties in writing (Desima authority to agree on a binding delivery date is solely Robin Gördes). The observance of delivery periods is subject to correct and punctual supply to ourselves from our suppliers, and we will not be liable for any delay due to a delay in the supply from our suppliers if we prove the conclusion of a corresponding contract with our supplier and furthermore prove that our supplier has not observed a delivery date that had been agreed with us. We will immediately provide information of any delays that become apparent. At any rate, the observance of the delivery date is subject to final clarification of all technical details from the customer, the timely receipt of information to be provided by the customer (if required), declaration of releases, payment of import duties and receipt of the deposit (where applicable) and we shall not be liable for any delay in delivery arising from the aforementioned.

4.3. Where we promise to deliver on a fixed date (pursuant to the joint written agreement – mutually signed by authorized company representatives (Robin Gördes for Desima) - of the parties whereby it is agreed that the delivery of the products must take place exactly at a certain time or within a specified period) but fail to deliver on time, we are liable for damages arising out of the non-delivery to the extent described in §4 (4.4) - (4.7) GTCB, irrespective of whether the customer is entitled to terminate the contract.

4.4. Subject to clause §4 GTCB, our liability for any loss caused by a delay in delivering the products caused by or arising from our (or our representatives' or our vicarious agents') culpable violation of an essential contractual obligation (these being duties whose fulfilment is essential for proper performance of the contract and whose observance the contracting party may rely on), shall be in accordance with statutory provisions and limited to typical and foreseeable loss.

4.5. Subject to clause §4 GTCB, our liability for any delay in delivering the products caused by or arising out of our (or our representatives' or vicarious agents') breach of any other contractual obligation shall be as follows: For a willful breach of the contractual obligation, our liability shall be unlimited; For a non-willful breach (e.g. grossly negligent violation) of the contractual obligations to the extent that the negligence concerns a breach of significant contractual duties (according to § 4 (4.4)), our liability shall be in accordance with the statutory provisions. Liability, however, only extends to foreseeable damages which may typically occur. Further liability is excluded irrespective of the legal nature of the asserted claim.

4.6. Our liability shall not include death or personal injury.

4.7. This clause sets out our entire liability to the customer for delay in delivering the products and, to the extent permitted by law, we shall have no further liability to the customer. For the avoidance of doubt, any further statutory rights or claims to which the customer is entitled, in addition to the damages due to delay in delivery for which we are responsible pursuant to this § 4, remain unaffected.

4.8. If the customer fails to accept delivery of the products, we shall be entitled to compensation for any loss and any additional expenses incurred by us as a result of: the customer failing to accept delivery of the products, in which case the risk of deterioration or destruction of the products passes to the customer at the time when the products are ready for shipment; or the customer culpably violating his statutory duties to cooperate for example (without limitation) the customer failing to pay, or paying the incorrect, import duties.

§ 5. Passing of Risk, Shipment

5.1. Unless otherwise agreed, the products are delivered to the delivery address as notified by the customer to us. The risk of deterioration or destruction of the products shall pass to the customer as soon as the products are handed over to the forwarding agent, carrier or other person or institution otherwise designated to carry out shipment. This also applies if the products are shipped from a warehouse and, in the case of a third-party deal, to shipment from our supplier's warehouse. At the customer's request and expense we will take out shipping insurance.

5.2. Our delivery terms are always "ex works" according to the Incoterms 2010 even if we arrange the shipment with our freight forwarder (UPS, Fedex, or similar) on behalf of our customer.

5.3. If shipment is delayed due to circumstances for which the customer is responsible, the risk passes to the customer at the time that the products are ready for shipment.

5.4. Notwithstanding the customer's rights under § 7 GTCB, the customer is not entitled to reject delivered products by reason of any minor or trivial faults.

§ 6. Export regulations

6.1. We reserve the right to examine the relevant export related legislation and the customer's compliance herewith. In the event of a breach of such legislation by the customer, we shall be entitled to postpone delivery until the legal obstacles for which the customer is responsible have been removed and we shall not be liable for any delay arising due to such breach by the customer.

6.2. The customer shall be liable for checking all necessary test measures (sanctions lists, end-use, embargo regulations, etc.) to ensure compliance with national, international, and especially US- (re-) export control regulations prior of (re-)exporting the directly or indirectly delivered goods by us. If necessary the customer shall obtain appropriate permits from the authorities at its own expense. The customer is not entitled to return goods or to claim damages, if the authorities refused an export permit.

§ 7. Retention of Title

7.1. We shall retain full title of the delivered products until we have received full payment in respect of all claims arising from the supply contract, and with regard to Entrepreneurs also until full payment in respect of all our claims arising from the existing business relationship with the customer have been paid, including any costs and interest incurred.

7.2. Until title to the products has passed to the customer, the customer shall be entitled to resell the products delivered by us under retention of title within the customer's ordinary course of business, although we can revoke our consent at any time. The products may neither be pledged nor assigned as a security to third parties. The customer hereby assigns to us (by way of future assignment) all claims against third parties from the resale of the products that are under retention of title. We hereby accept this assignment. We are entitled to notify such third parties that the customer will transfer the claim to us and to assert the assigned claim in our own name.

7.3. The customer must inform us immediately and in writing if any of the products under retention of title are seized or subject to any other intervention by a third party. The customer must inform the attaching creditor of the retention of title. Any assignment for security and the transfer or pledging of the expectant right is inadmissible.

7.4. If the customer's conduct is in breach of contract, particularly (without limitation) if he is in default with payments, we are entitled to rescind the contract and recover the products. If we recover the products from Entrepreneurs, this represents a rescission of the contract and, provided that we notify the customer, we may sell the recovered products on the open market at any price. We will credit the revenue received from the sale (minus reasonable processing costs) against the customer's liabilities.

7.5. If we are entitled to rescind the contract and to recover the products, the customer is obliged to allow one of our employees to enter the premises of the customer, or any third party where the products are stored, at any time in order to recover them.

7.6. As long as the products are our property, the customer is obliged to treat them with care. In particular, the customer must insure them for their replacement value against the risk of damage or destruction as a result of fire, water and theft.

§ 8. Warranty for Defects

8.1. The following terms in this § 8 regarding warranty for defects shall only apply to newly manufactured products. Unless otherwise agreed or unless we have modified the used products, used items are sold as seen and we shall not be liable for any defects in such used products. As far as we are liable for defects for used products (in the case of a separate agreement or in cases where we have modified the used products), the following terms shall apply accordingly.

8.2. In relation to all warranty claims, Merchants within the meaning of commercial law (being a sole trader or company involved in wholesale trade), must comply with their inspection obligations and requirements to give notice of defects pursuant to section 377 of the German Commercial Code (merchants have a duty to inspect the products on delivery for obvious defects and notify the seller immediately of any such defects and in relation to any other defects, to notify the seller within 2 weeks of such defect arising or coming to the merchant's attention. Non-commercial customers (being customers that are not involved in wholesale trade) have to inspect the supplied products for obvious material deficiencies, wrong deliveries and quantity

errors as soon as possible after their delivery and must notify us in writing within 14 days of delivery of any obvious material deficiencies, wrong deliveries and quantity errors. Provided that the customer posts this notice to us within the 14 days of delivery of the products, the customer will be deemed to have met this deadline.

8.3 Defective textile wallcoverings must be forwarded for inspection to Desima in original condition. After having cut the item or other processing any complaint is excluded. The examination of concealed defects has to be carried out with the maximum processing of three stripes of textile wallcoverings. Any contractual claims of the buyer because of expenses due to rework are excluded. In case of a Desima credit note for fairness reasons the amount can only be cross-calculated against future orders.

8.4. If the purchased product is defective: we are entitled to choose whether to repair the defect by way of subsequent performance or to replace the product with a product free from defects. The customer must grant us a reasonable time period for the subsequent performance; we will bear all necessary expenses relating to inspection of the product and, if applicable, subsequent performance, in particular all transport, delivery, work and material costs (but we will not be liable for any costs associated with assembly or disassembly of the purchased product); and the customer is only entitled to further statutory warranty rights (i.e. to revoke the contract or reduce the purchase price, demand damages, or demand reimbursement of necessary expenditures) if we have failed in the subsequent performance or if we have rejected subsequent performance without being entitled to do so or if a subsequent performance deadline has not been observed. However, our liability for damages is limited to foreseeable damages typically arising for this particular kind of contract.

8.5. If the product is not defective, the customer shall reimburse us for any and all expenses we have incurred as a result of the customer's claim that the purchased product is defective.

8.6. The customer can only expect a suitability or merchantability of the products that goes beyond the suitability for the usual kind or deviates from it, or a quality that is not usual for products of the same kind, if these are stipulated in a corresponding written agreement or contained in public statements from us. Variations in color, design and dimensions (width +/- 4%) which are caused by production tolerances are not considered as defects. We are at the customer's disposal for issuing information and providing advice to the best of our knowledge on how to use our products. However, we are only liable beyond the provisions of the aforementioned § 8 (8.3) GTCB if a separate consultancy agreement is concluded or payment going beyond the purchase price of the products has been agreed between the parties.

8.7. The limitation period in relation to claims for a defective product shall be 2 month from the date of delivery of the product; in relation to: defects in products that have been fraudulently concealed by us; defects in products where recourse lies with a supplier; defects in products where the supplier has retained title to the good (§ 438 I No 1 BGB); or defects in products that lead to death or personal injury caused by us (or legal representatives or our vicarious agents) (§ 11 Section 1 GTCB) , the legal limitation period for claims applies; and in relation to all other defects a limitation period of 2 month calculated from the date of delivery of the products.

8.8. A delivery of the ordered Textile Wallcoverings in separate pieces is acceptable up to a certain degree. Our standard roll size is 50 linear meters and smaller cuts might be compensated adequately by additional 2-4m extra. Different batches will be highlighted on the articles.

8.9. A delivery of the ordered Textile Wallcoverings in a smaller or larger width is acceptable up to a certain degree. The delivery should make up to the ordered amount of m² so that a smaller width will make more linear meters while a larger width will make less linear meters. Example, our standard width is 100cm. Therefore 80m² could also be delivered in 100 linear meters of 80cm width.

8.10. The warranty set out in this § 8 GTCB shall not apply if our hanging instructions are not followed or alterations are carried out on the product. Our hanging instruction is available free of charge up on request.

8.11. If an item that we delivered has a deficiency in title, we are entitled at our discretion to remedy the defect by delivering an equal substitute suitable for comparable use, or to rectify the deficiency in title by reaching an agreement with the third party concerned.

8.12. If the subsequent performance has failed or an additional period for repair, which is to be set by the customer for the subsequent performance, has expired without result or it is dispensable according to the statutory regulations (i.e. where we make a clear and unequivocal statement refusing to provide subsequent performance), the customer shall be entitled to withdraw from the contract of sale or reduce the purchase price. This right of withdrawal does not apply for insignificant defects.

8.13. Claims of the customer for damages or reimbursement of wasted expenditure shall only exist in accordance with § 9 GTCB; otherwise such claims shall be excluded.

§ 9. Liability

9.1. We are unconditionally liable according to statutory provisions for injury to life, body and health (e.g. death or personal injury) owing to negligent or willful breach of duty by us, our legal representatives as well as for damages encompassed by liability pursuant to the Product Liability Act.

9.2. Subject to § 9 (9.1) GTCB we are liable under statutory provisions for damages resulting from or arising out of our (or our legal representatives) fraud, willful or grossly negligent breaches of contract. In such cases our liability shall be limited to all typical and foreseeable loss. If and insofar as we have given a guarantee regarding the condition and / or the durability of a product, we shall be liable on the grounds of and to the extent of such guarantee. However, any guarantee will not render us liable for any damages that affect anything but the products themselves unless such damage is expressly included in the guarantee.

9.3. We shall be liable for damages caused by ordinary negligence insofar as the breach of such contractual obligations whose observance is of particular importance for achieving the purpose of the contract (cardinal obligations) is concerned (e.g. a breach of an essential term of the contract). However, such liability shall be limited to typical and foreseeable loss.

9.4. Any further liability is excluded regardless of the legal nature of the asserted claim; this applies particularly (without limitation) to claims in tort or to claims for compensation regarding reimbursement of frustrated expenditure (loss resulting from the purchase of third party products for use with the defective product); our liability for delay is set out in §4 GTCB and is unaffected by this §9. In so far as our liability is excluded or restricted, the exclusions and restrictions also apply to the personal liability of our employees, workers, members of staff,

representatives and vicarious agents. Strict liability according to statutory provisions remains unaffected in every case.

9.5. This liability arrangement also applies to obligations similar to legal transactions (pre-contractual negotiations) pursuant to section § 311 (2) and (3) BGB.

9.6. As far as our products are subject to safety regulations, the safety regulations in force in Germany shall apply. If the products are exported by the customer to a foreign country, we shall not be held liable for any breach of regulations valid in that country; the responsibility for the compliance with such regulations lies with the customer.

9.7. The customer shall indemnify Desima Robin Gördes e.K. against any liability suffered or incurred by Desima Robin Gördes e.K. in respect of any damage to property, death or personal injury arising from any fault or defect in the materials or workmanship of the products to the extent that such liability arises as a direct result of any act or omission of the customer.

§ 10. Place of Performance, Applicable Law, Jurisdiction

10.1. The place of business is Überlingen, Lake Constance-Germany and this is considered the place for payments and as place of jurisdiction for merchants (within the meaning of commercial law as described in §9.1 GTCB), legal entities incorporated under public law and special governmental trusts. This clause shall also apply where the customer does not have any place of business or residence in Germany or his place of residence/business or habitual residence at the time that proceedings are commenced are unknown.

10.2. The laws and regulations of the Federal Republic of Germany shall apply, excluding conflict of laws provisions. The provisions of the Convention on Contracts for the International Sale of Goods shall not apply.